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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,327	04/27/2006	Martin Theodoor de Groot	820614-1010	5725

Todd Deveau
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Suite 1750
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7590

03/23/2010

EXAMINER

DYE, ROBERT C

ART UNIT	PAPER NUMBER
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1791

MAIL DATE	DELIVERY MODE
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03/23/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/578,327</p>	<p>Applicant(s) DE GROOT, MARTIN THEODOOR</p>	
	<p>Examiner ROBERT DYE</p>	<p>Art Unit 1791</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 March 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Joseph S. Del Sole/
Supervisory Patent Examiner, Art Unit 1791

/R. D./

Continuation of 3. NOTE: Claim 8 has been amended to define the recess as being formed by deformation and that the insert unit is placed in the hole formed in the covering layer with the recess configured to receive the flange of the insert unit. This amendment would require further search and consideration .

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that the cited combination of van Dreumel in view of DE20105550 and Spengler would not be obvious because:

- 1) DE '550 does not teach an arrangement having thermoplastic insert unit and fiber-reinforced covering layer and the arrangement of DE '550 offers sufficient freedom to apply pressure, ultrasonic energy and welding times that are contrary to applying an insert in a thermoplastic panel, as recited in claim. The combination teaches away from claim 1 because substituting the ultrasonic welding apparatus of DE '550 for the frictional welding apparatus of van Dreumel would be detrimental to the object of the method of claim 1.
- 2) Results would not be predictable as one would expect the high energy vibrations from ultrasonic welding to collapse the foam structure.
- 3) Dreumel teaches away from using a foam core because rotational friction welding as taught by Dreumel would immediately destroy a foam structure if present and thus one would not use a foam core such as in Spengler.

The Examiner disagrees. The cited references do not teach away from their combination because their disclosures do not criticize, discredit or otherwise discourage the solution claimed, particularly the ultrasonic welding of inserts to materials having foamed cores. Applicant argues that the combination would be inoperable because the ultrasonic welding apparatus of DE '550 or rotational welding of van Dreumel would cause the collapse of a foam core. Applicant also appears to suggest unexpected results in that one would not look to ultrasonic welding instead of frictional welding because the high energy vibrations of ultrasonic welding risk collapsing a foam structure and thus the substitution was not predicable (pg 8, paragraphs 2-3). In either case, the arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965). Examples of attorney statements which are not evidence and which must be supported by an appropriate affidavit or declaration include statements regarding unexpected results and inoperability of the prior art. See MPEP 716.01(c). There does not appear to be factual evidence to support that the cited combination would indeed destroy a foamed core. Furthermore, considering the claimed method of ultrasonically welding a thermoplastic insert to a foamed material is deemed to be operable, it is unclear as to what distinguishing feature renders the claimed method operable but the cited prior art combination inoperable.